

11 December 2020

Chris Abbott  
Contact Energy Ltd  
PO Box 10742  
Wellington

Dear Chris,

**RE: The Default Distributor Agreement and Recorded Terms**

Thank you for your letter dated 02 December 2020 regarding your concerns about Vector Network's (Vector) proposed draft Default Distributor Agreement (DDA) and its use of recorded terms.

**The DDA and Data templates provide long-term benefit for consumers**

On July 2020, the Authority revised Part 12A of the Code and introduced the DDA and Data templates to better promote competition in and efficient operation of the electricity industry for the long-term benefit of consumers.

The standardised terms of the DDA were introduced to reduce transaction costs and effort required to negotiate contracts between traders and distributors, promote more equal bargaining positions between industry participants, and promote competition in emerging markets by unbundling distribution services from contestable services.

The Data template was introduced to allow distributors to develop more cost-reflective distribution prices, expand their networks more efficiently by analysing consumption patterns to improve their investment plans, plan maintenance more easily, and respond more effectively to electrification and new technologies, like electric vehicles.

We have noted your concern that Vector's proposed draft DDA and its use of recorded terms may undermine the objectives of the DDA and Data templates as set out above.

**The data and liability clauses identified are within our jurisdiction to regulate**

As you are aware, the Authority is unable to regulate or mandate quality standards as the term is used in Part 4 of the Commerce Act 1986.

The Authority addressed this issue by creating a new category of terms throughout the DDA template called 'recorded terms'. Recorded terms allow for distributors to record contractual terms that might be expected to be seen in a complete contract for distribution services, but that relate to matters the Commerce Commission may have the jurisdiction to regulate under Part 4 of the Commerce Act. The Authority also provided examples of the types of terms we consider may be outside of our jurisdiction.

The examples of recorded terms you have provided appear to include terms that do not fall within the description of the recorded term in the DDA template and go beyond anything analogous to the examples given, and circumvent other provisions of the DDA template. Some of the matters identified, such as expanded liability and data access clauses, are within the Authority's jurisdiction to regulate – as we have done so through the DDA and the Data templates.

ADXLetter131

### **There are alternative means to address matters that are not recorded terms**

The Authority has provided alternative means to address the matters that are not recorded terms:

- Any term that a distributor proposes to include in the distributor agreement that is not a core term, operational term or recorded term must be added as a collateral term (and comply with the requirements for collateral terms under the Code) so the retailer has a genuine choice whether to accept the term,
- Distributors and retailers can negotiate other terms, or separate agreements or "side-agreements", for related and other additional services, or
- Distributors and retailers can mutually agree to contract under terms not contemplated by the Code by entering into an alternative distribution or data agreement.

In the specific case of accessing consumption data, the distributor and retailer can agree to exchange data via the Default Data template that we have regulated in Appendix C of Schedule 12A.1 of the Code.

### **We expect distributors to comply with the description of recorded terms**

While the draft DDAs are still in consultation, distributors have the opportunity to ensure their drafting of recorded terms complies with the Code and the intent of those terms which is to benefit consumers in the long-term.

The Authority does not expect recorded terms to be used as a mechanism to introduce other rights and obligations, especially those covered elsewhere in the Code or DDA template.

From 17 December 2020, when distributors are required to publish their DDAs, we will review all DDAs to see whether the matters you have raised have been addressed and we will respond to any breach of the Code.

This letter will be published on the Electricity Authority website.

If you have any further questions about the letter then please contact Joey Au, Manager of Retail and Network Markets ([Joey.au@ea.govt.nz](mailto:Joey.au@ea.govt.nz)).

Yours sincerely



Andrew Doube  
**GM Market Design**

cc: Vector Networks, ERANZ, ENA